

## REMARKS

This amendment is submitted in response to the nonfinal Office Action mailed on November 15, 2004. Claims 1-15 are pending in this application. In the Office Action, Claims 4-6 and 10-12 are objected to and Claims 1-3, 7-8 and 13-15 are rejected under 35 U.S.C. §103. In response Claims 1 and 5 have been amended. Claim 16 has been added. These amendments do not add new matter. In view of the amendments and/or for the response set forth below, Applicants respectfully submit that the rejections should be withdrawn.

Claim 16 has been added and is fully supported in the specification.

In the Office Action, Claims 1-3, 7-8 and 13-15 are rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 4,829,889 to Takeuchi et al. ("*Takeuchi*") in view of U.S. Patent No. 6,026,732 to Kollep et al. ("*Kollep*"). Applicants believe these rejections are improper and respectfully traverse them for at least the reasons set forth below.

Claim 1 has been amended to include a device having means for individually unloading a capsule selected from one of the series of capsules into a drink-forming position and comprising support means on which the storage means is rotatable and comprises a passage. This amendment is fully supported in the specification, for example, at page 9, line 1 to page 10, line 18.

Contrary to independent Claim 1, *Takeuchi* fails to disclose a device with capsule storage means that rotates on a support means and a passage in the support means to allow direct descent of the capsule in the reception part to prepare the drink. In *Takeuchi*, cartridges containing powdered materials are lodged in hoppers (22) that are nonmovable. The hopper releases a cartridge onto a rotating assembly comprising a rotary disc (8) and a cartridge support disc (19) wherein the rotary disc (8) rotates about a central axis. See, *Takeuchi*, column 4, lines 29-68. The rotary disc and cartridge support disc combine to form receiving and holding portions to hold and transfer cartridges from the hoppers to the lower extraction head (25). *Id.* The hoppers (22) and extraction head (25) are therefore angularly spaced apart (i.e. not directly aligned). See, *Takeuchi*, Figure 2. The system for brewing the cartridge is composed mainly of the lower extraction head and an upper extraction head (43) that is positioned above the rotating assembly and in vertical alignment with the lower extraction head. In essence, *Takeuchi* teaches "indirect"

transfer of capsules including the capture, transport and release of the capsules. These separate steps involve much more complexity than the presently claimed device.

The claimed invention is based, in part, on the “direct” transfer of capsules from the storage means to the extractions means. Unlike *Takeuchi*, the storage means holding the capsules of the present claims is rotatable on the support means. Further, in contrast to *Takeuchi*, the present claims include a reception part that is arranged beneath an individual unloading means to receive the selected capsule by direct descent through the passage and from the storage means (i.e. the storage means is vertically aligned with the reception means for producing the drink). The device of the claimed invention removes complexity and limits the number of pieces to capture and free the capsule. As a result, the claimed invention is more reliable than the one disclosed in *Takeuchi*. Indeed, the claimed invention avoids transporting the capsule individually with holding means, and thus it reduces the risks of blocking of the device or loss of the capsule. The capsule always remains stored in the storage means (e.g. tubes) until it falls down into the reception part.

Another problem of *Takeuchi* is that the hoppers can only be distributed on an arcuated path that is angularly limited on the discs. Only a few hoppers can be installed because the opposite region of the discs is occupied by the extraction system (25, 43) and another region on the discs is dedicated to eliminating the used capsule. See, *Takeuchi*, Figure 1. In contrast, in the claimed invention, for example, the storage means can occupy all of the upper surface of the disc thus allowing a larger amount of individual storage means. The extraction device can thus be located under the support disc, and a passage in the support means makes the transfer by direct descent from the storage means to the extraction device. Furthermore, the capsule can then be eliminated more easily.

Contrary to the present claims, *Kollep* fails to disclose a device with capsule storage means that rotates on a support means and a passage in the support means to allow direct descent of the capsule in the reception part to prepare the drink. Indeed, *Kollep* relates to a device for holding and positioning a capsule for preparation of a drink under pressure. The loading of the capsule in this device is carried out manually only and there is no carrousel or similar capsule storage means involved.

As a result, the combination of *Takeuchi* in view of *Kollep* does not teach, suggest, or even disclose the claimed invention, and thus, fails to render the claimed subject matter obvious

for at least these reasons. For the reasons discussed above, Applicants respectfully submit that Claim 1 and Claims 2-15 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited references.

Accordingly, Applicants respectfully request that the obviousness rejections with respect to Claims 1-3, 7-8 and 13-15 be reconsidered and the rejections be withdrawn.

Claims 4-6 and 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicants respectfully submit that the patentability of Claim 1 renders moot the objection of Claims 4-6 and 10-12. In this regard, the cited art fails to teach or suggest the elements of Claims 4-6 and 10-12 in combination with the novel elements of Claim 1.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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